STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BRYAN CLARENCE JACKSON, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JANET NICOLE JACKSON,

Respondent-Appellant,

and

BRANDON CORDELL McCLENDON,

Respondent.

UNPUBLISHED
February 2, 2006

No. 263905
Wayne Circuit Court
Family Division
LC No. 05-439681-NA

In the Matter of BRYAN CLARENCE JACKSON, Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BRANDON CORDEL McCLENDON,

Respondent-Appellant,

and

JANET NICOLE JACKSON,

Respondent.

No. 264253
Wayne Circuit Court
Family Division
LC No. 05-439681-NA

Before: Murray, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Respondents appeal as of right from the trial court order terminating their parental rights to the minor child. We affirm.

Respondent Brandon McClendon's parental rights were terminated under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(iii), while respondent Janet Jackson's parental rights were apparently terminated under MCL 712A.19b(3)(b)(ii) and (g). Respondents argue that clear and convincing evidence did not support termination under these subsections.

We review the trial court's findings for clear error. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). Upon review of the record, we are not left with a definite and firm conviction that a mistake was committed in terminating the parental rights of respondents.

With respect to respondent McClendon, the evidence did clearly and convincingly show a failure to provide proper care and custody and a reasonable likelihood of harm if Bryan were returned to his care. The evidence showed that respondent McClendon severely abused the child, causing extensive injuries. Respondent McClendon confessed the abuse to the police, and the confession was consistent with many of the details of Bryan's injuries. While respondent McClendon challenges the confessions on grounds that his mental condition was not stable, the trial judge chose to believe the police officer, who testified that respondent McClendon was fearful but calm and rational. We have no basis for disagreeing with this conclusion. The trial judge was in the best position to judge the credibility of the witnesses, and her view must be accorded deference by this court. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Respondent McClendon had a conviction for carrying a concealed weapon and had handled or played roughly with Bryan before to the point that respondent mother and a doctor told him to stop. He spent the most time with Bryan, caring for him while respondent Jackson worked or attended college. While other people had access to Bryan, there was never any credible suggestion that any of them caused the extensive injuries. We find that clear and convincing evidence supported the trial court's termination of respondent McClendon's parental rights under MCL 712A.19b(3)(b)(i), (g), (j), and (k)(iii).

Further, the evidence did not show that termination of respondent McClendon's parental rights was clearly not in Bryan's best interests. MCL 712A.19b(5); *Trejo, supra* at 356-357. Respondent McClendon was charged with four counts of first-degree child abuse as a result of the assault on Bryan. If convicted, he will be unavailable to care for Bryan. If not convicted, the evidence still showed that he would be unable, within a reasonable time, to properly care for Bryan. There was no evidence of a strong bond between respondent McClendon and Bryan. Bryan is very young and needs a safe, stable, permanent home, which respondent McClendon cannot provide. Thus, we conclude that the trial court did not clearly err in finding that termination of respondent McClendon’s parental rights was not clearly contrary to the child's best interests.

With respect to respondent Jackson, we find there was sufficient evidence to support the stated statutory grounds for termination. There is evidence to support that respondent Jackson knew or should have known that respondent McClendon was abusing Bryan and failed to protect him from the abuse. When Bryan was taken to the hospital he had skull abrasions, hemorrhaging in the right eye, elevated liver enzymes, leg fractures, pelvic fractures, and a rib fracture; injuries that were at various stages of healing. Dr. Holly Gilmer-Hill indicated that, with the injuries Bryan sustained, any prudent parent should have brought the child in for care prior to March 3, 2005, because a prudent parent would have recognized the pain a week or two prior to this date. Dr. Gilmer-Hill testified that even an inexperienced teenage mother would recognize the pain when a child cries whenever he is touched in certain areas, and that a teenage parent would be expected to bring the child to a pediatrician or their parents. In addition, respondent Jackson had observed respondent McClendon playing roughly with Bryan by dropping him four or five inches, and throwing him in the air, all of which occurred while Bryan was less than three months old. After witnessing this behavior, respondent Jackson continued to entrust respondent McClendon to care for the child. Even after it was revealed to respondent Jackson that Bryan had the various fractures and injuries, she allowed respondent McClendon to live with her. Reviewing the above, we find that the trial court did not clearly err in finding that clear and convincing evidence existed to support termination pursuant to MCL 712A.19b(3)(b)(ii) and (g). We recognize there is conflicting evidence with regard to whether a young inexperienced parent would have recognized Bryan's injuries, but, in giving due regard to the trial court's special opportunity to observe witnesses, we are not left with a firm conviction that a mistake was made.

Further, we find nothing in the record to support that termination of respondent Jackson's parental rights was not clearly in the best interests of the child. There is no evidence of a strong bond between respondent Jackson and Bryan. To the contrary, the evidence supported that respondent McClendon spent the most time caring for Bryan while respondent Jackson worked or attended college. There is nothing to support that respondent Jackson would be able to provide proper care and custody and a safe environment for the child within a reasonable time.

Affirmed.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly